

PT 97-8

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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|-----------------------------|---|-----------------|--------------------|
| CITY OF CHICAGO, DEPARTMENT | ) |                 |                    |
| OF HOUSING                  | ) |                 |                    |
| Applicant                   | ) |                 |                    |
|                             | ) | Docket #        | 93-16-1343         |
| v.                          | ) |                 |                    |
|                             | ) | Parcel Index #s | 20-16-214-028-8001 |
|                             | ) |                 | 20-16-214-028-8002 |
| THE DEPARTMENT OF REVENUE   | ) |                 | 20-16-214-029-8001 |
| OF THE STATE OF ILLINOIS    | ) |                 | 20-16-214-029-8002 |

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RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Jory Wishnoff, Senior Attorney, Office of the Corporation Counsel of the City of Chicago, appeared on behalf of the City of Chicago, Department of Housing.

Synopsis:

The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on May 9, 1996, to determine whether or not Cook County parcels numbered 20-16-214-028-8001, 20-16-214-028-8002, 20-16-214-029-8001 and 20-16-214-029-8002 should be exempt from real estate taxation for all or part of the 1993 assessment year.

Mr. Kenneth Jackson, Executive Director of the Washington-King Resource Center, which is operated by the Seniors of the Third Ward, was present and testified on behalf of the City of Chicago, Department of Housing (hereinafter referred to as the "City") and the Seniors of the Third Ward (hereinafter referred to as the "Seniors").

The issues in this matter include whether Cook County parcels numbered 20-16-214-028-8001 and 20-16-214-029-8001 were owned by the City during all or part of the 1993 assessment year. The next issue is whether said

parcels were located within the corporate limits of the city. The third issue is whether the lease by the City to the Seniors required the Seniors to pay the real estate taxes on said fee parcels. The last issue is whether the City leased the aforesaid parcels to a charitable organization which used Cook County leasehold parcels numbered 20-16-214-028-8002 and 20-16-214-029-8002 for charitable purposes during all or part of the 1993 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that Cook County parcels numbered 20-16-214-028-0001 and 20-16-214-029-8001 were owned by the City during the period May 21, 1993, through December 31, 1993, and were located within the corporate limits of said City. It is also determined that the Seniors, as the lessee, was not required by the lease to pay real estate taxes on the fee parcels in this matter. Finally, it is determined that Seniors is a charitable organization, and that it used Cook County leasehold parcels numbered 20-16-214-028-8002 and 20-16-214-029-8002 for charitable purposes during the period May 21, 1993, through December 31, 1993.

#### Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that these parcels did not qualify for exemption during the 1993 assessment year, was established by the admission in evidence of Department's Exhibits numbered 1 through 5B.

2. On May 21, 1993, the City of Chicago, in Trust for the Use of Schools, as grantor, conveyed these parcels to the City of Chicago, a municipality. (Dept. Ex. No. 1F)

3. By a letter dated September 19, 1995, Ms. Iris E. Sholder, general counsel to the Cook County Assessor, advised Mr. Wishnoff that Cook County parcels numbered 20-16-214-028-8002 and 20-16-214-029-8002 were leasehold

parcels and Cook County parcels numbered 20-16-214-028-8001 and 28-16-214-029-8001 were fee parcels. (Dept. Ex. No. 1V)

4. The parcels here in issue are located within the municipal boundaries of the City. (Dept. Ex. No. 1T)

5. On December 28, 1989, the City of Chicago, in Trust for the Use of Schools, leased the fee parcels here in issue and the school building thereon, formerly known as the Moseley School, to the Seniors. (Dept. Ex. No. 1U)

6. The aforesaid lease, dated December 28, 1989, provided that the rent to be paid by the Seniors was one dollar per year. (Dept. Ex. No. 1U)

7. Said lease included the following tax clause:

Lessee shall pay any and all leasehold or use taxes on said premises if levied, within deadlines established by governmental taxing bodies.

8. Seniors is an Illinois not-for-profit corporation. (Appl. Ex. No. 1)

9 The former Moseley School, now known as the Washington-King Resource Center (hereinafter referred to as the "Center"), was operated by the Seniors as an emergency shelter for 80 homeless men, seven nights a week, during the period May 21, 1993 through December 31, 1993. (Tr. pp. 20-22)

10 The operation of the center was the primary activity conducted by the Seniors during the period May 21, 1993 through December 31, 1993. (Tr. p. 14)

11. The Seniors, during 1993, also fed the hungry on Thanksgiving, provided toys for poor children at Christmas as well as sponsoring activities for Senior citizens. (Tr. p. 14)

12. During the period May 21, 1993, through December 31, 1993, the first floor of the building on these parcels contained four dormitory bedrooms, where 80 men slept. It also contained an all-purpose room, a

dining room, a kitchen, laundry facilities, a shower room, a gymnasium and administrative offices. (Tr. p. 19)

13. Mr. Kenneth Jackson, executive director of the Center, testified that the second floor of the former Moseley School Building had been gutted and was used for storage during the period May 21, 1993, through December 31, 1993. (Tr. pp. 27 & 28)

14. The nightly routine at the Center begins at 8:00 P.M. when males, aged 18 and over, (hereinafter referred to as the "Clients") are admitted to the Center. First they are searched for weapons or contraband. Next they must take a shower. Then they are served dinner. The Clients are in bed by 10:00 P.M. At 5:00 A.M. the Clients are awakened and then have breakfast. By 7:00 A.M. they are back on the street. (Tr. pp. 20 & 21)

15. Clients may sleep at the shelter for 30 consecutive days. Then they may not use the shelter for 6 months. The Center has a waiting list of prospective Clients wanting to use the shelter. (Tr. pp. 21-22)

16. The Center does not charge the Clients using the shelter for staying there or for the meals which they are served. (Tr. p. 22)

17. Seniors is a delegate agency of the City and the City paid the Seniors to operate this homeless shelter during the period May 21, 1993, through December 31, 1993. (Tr. pp. 22 & 23 & Appl. Ex. No. 5)

18. Seniors also received contributions from individuals, including former clients who had gotten back on their feet. (Tr. p. 27 & Appl. Ex. No. 5)

#### Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The Supreme Court long ago determined that the question of whether property is exempt from taxation, depends upon the constitutional and statutory provisions in force at the time for which the exemption is claimed. The People v. Salvation Army, 305 Ill. 545 (1922). The statutory provision in force during 1993 concerning the exemption of real property from real estate taxation was 35 **ILCS** 205/19 *et seq*

35 **ILCS** 205/19.6 exempts certain property in part as follows:

...all property owned by any city or village located within the incorporated limits of the city or village, except property that has been leased or may be leased by a city or village to lessees who are bound under the terms of the lease to pay the taxes on the property.

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

35 **ILCS** 205/26 provides in part as follows:

...when real estate which is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the real estate taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his assignee, as real estate.

First of all, I find that the parcels here in issue are located within the corporate limits of the City of Chicago. The tax clause in the lease between the City and the Seniors set forth in finding of fact No. 7 clearly is intended to require the Seniors to pay the leasehold tax determined pursuant to 35 **ILCS** 205/26 and not any tax assessment levied against the fee. Consequently, Cook County freehold parcels numbered 26-16-214-028-

8001 and 26-16-214-029-8001 qualify for exemption pursuant to 35 **ILCS** 205/19.6. See People ex rel. Korzen v. American Airlines, 39 Ill.2d 11 (1967) in which the Supreme Court reached a similar conclusion concerning a lease between the City of Chicago and American Airlines. In that case, while the language of the lease was slightly different, the intention of the parties was clearly the same as in this case.

Let us next consider whether the Seniors is a charitable organization which used leasehold parcels numbered 20-16-214-028-8002 and 20-16-214-029-8002 for charitable purposes during the period May 21, 1993, through December 31, 1993.

35 **ILCS** 205/19.7 exempts certain property from taxation in part as follows:

All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit,....

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes.

Based on the foregoing findings of fact, I conclude that the Center provides a place to sleep as well as two meals per day to its clients at no cost. Consequently, I conclude that the Seniors provided its benefits to

an indefinite number of persons, charity was dispensed to all who needed and applied for it, to the best of Senior's ability, and no obstacles were placed in the way of those seeking the benefits. Since Seniors is an Illinois not-for-profit corporation, I conclude that it had no capital, capital stock, or shareholders and did not profit from this enterprise. Senior's funds, I conclude, were derived mainly from private and public charity, and were held in trust for the objects and purposes expressed in its charter. Finally, I conclude that the Seniors used these leasehold parcels primarily for charitable purposes during the period May 21, 1993, through December 31, 1993.

In the case of Childrens Development Center v. Olson, 52 Ill.2d 332 (1972), the Supreme Court held that where one exempt entity leases property to another exempt entity which uses said property for an exempt purpose, the lease will not be considered a lease for profit. This is particularly true, in a case such as here, where the lease is for \$1.00 per year.

Based on the foregoing, I recommend that Cook County parcels numbered 20-16-214-028-8001, 20-16-214-028-8002, 20-16-214-029-8001, and 20-16-214-029-8002 be exempt from real estate taxation for 62% of the 1993 assessment year.

Respectfully Submitted,

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George H. Nafziger  
Administrative Law Judge  
April 23, 1997